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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------|------------------|
| 10/718,906   | 11/21/2003  | Kevin Cable          | BRP-56                    | 1643             |
| 44728  | 7590        | 11/30/2004           | EXAMINER                  |                  |
| J. BENNETT MULLINAX, LLC<br>P. O. BOX 26029<br>GREENVILLE, SC 29616-1029 |             |                      | TARAZANO, DONALD LAWRENCE |                  |
|  |             |                      | ART UNIT                  | PAPER NUMBER     |
|  |             |                      | 1773                      |                  |

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/718,906

Applicant(s)

CABLE, KEVIN

Examiner

D. Lawrence Tarazano

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11-15 and 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11-15, and 17-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-7, and 11-15, 17-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Heffelfinger et al (2001/0055692).
3. Heffelfinger et al. teach extruded multilayer film structures, in which the film structures comprise outer heat sealable layers made of linear low-density polyethylene (Metallocene catalyzed polyethylene having a density of 0.910 g/cc) and 0.23% of a silica-antiblocking agent (corresponding to the applicants inorganic particles). Example 4 shows three layer films having a polypropylene core. The additives (antiblocking agents) may be added to one or more layers [0025] and including both silica and diatomaceous earth [0026].
4. The surfaces of the films can be laminated to other materials such as paperboard, craft paper, or cartonboard.
5. These films are used for packaging applications so it is easy to envisage them being formed into a formed package as claimed.

Art Unit: 1773

6. Claims 1-6, 11, 12, and 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Gu (2002/0187333).

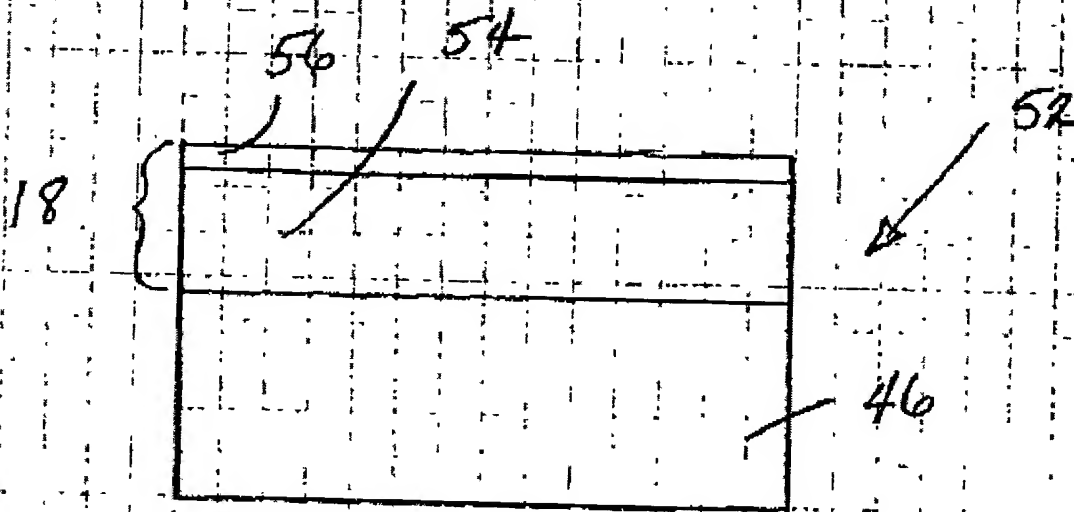


FIG. 3

7. Gu teaches multilayer coextruded structures (18) comprising cellulose substrate (46) [0048, including paperboard]. The coextruded film (18) may contain talc or calcium carbonate [0056]. Sublayer (54) contains polypropylene materials [0050], and the surface layer (56) may contain heat sealable materials such as EXACT™ or AFFINITY™ (LLDPE, polyethylene) [0052].

8. Claims 1-7 and 11-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Castle et al (2002/0051873).

9. Castle et al. teach paperboard packaging having a single polymer layer predominately comprising LDPE. The polymer layer may also contain filler in the blend to increase the stiffness or barrier properties of the laminate [0018]. They specifically describe a blend of

LDPE, nylon and calcium carbonate [0018]. Objects such as milk cartons are made from the laminate (example 3). The examiner notes that LDPE is a heat sealable material.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-7, 11-15, 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heffelfinger et al. (2001/0055692).

12. Heffelfinger et al. teach that the films of their invention can be laminated to a substrate such as paper or paperboard. These films are also used in packaging applications.

13. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made paperboard or paper laminate out of the films taught by Heffelfinger et al. in order to make laminate structures useful for packaging applications, such as boxes (cartons) made from the laminate since this is a common package structure.

14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have added antiblocking agents to the layers of the films taught by Heffelfinger et al. in order to produce films with improved antiblocking properties. Regarding claim 20, it would have been obvious to one having ordinary skill in the art to have to have

Art Unit: 1773

coated both sides of a paperboard laminate so that the second surface would be more resistant to moisture.

15. Claims 1-7, 11-15, 17-20, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castle et al (2002/0051873).

16. The general structure of Castle et al. is taught above. It would have been obvious to one having ordinary skill in the art at the time the invention was made to added filler to the compositions taught by Castle et al. in order to produce carton structures with increased stiffness.

17. Regarding claim 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have coated both sides of the structure so that both sides of the surface would be protected from moisture.

18. Regarding claim 25, the applicants' claim 20-35%, and this amount would be clearly possible in Castle et al. as the amount of filler is related to the stiffness of the end product and there is no showing of criticality with respect to the amount claimed.

### ***Response to Arguments***

19. Applicant's arguments filed 09/01/2004 have been fully considered but they are not persuasive.

20. While the applicants state that 20-35% filler is needed to provide the claimed "anti-scalping" effect. The amount of 20-35% is the effective amount for a citrus product or orange juice. The examiner takes the position that the "term effective amount" would be dependent both on the length of time that a product was to be used and the nature of the product. The applicant

has not set forth the conditions (in the claim) under which would necessitate that 20-35% filler would be effective. The examiner takes the position that the claims are not commensurate in scope with the applicant's arguments.

21. The applicant also argues that Heffelfinger contains filler magnitudes less than the operating examples; the examiner notes that the applicant's claims are not so limited.

22. Regarding claim 24, films in general are extruded, furthermore this is a process limitation. A coextruded film that is laminated is still an extruded film contrary to the applicant's allegations.

23. As a point of reference claim 25 is so broad that it encompasses materials not containing a polymer layer. It appears that a paperboard coated with an inorganic blend of any of the recited materials mixed with clay would meet the claimed invention.

24. Regarding the rejections based on Gu, the applicant's claims do not require specific amounts of materials and the arguments are not commensurate in scope with the claimed invention. The term "effective amount" is relative.

25. Regarding the rejections based on Castle et al., the reference clearly teaches adding fillers such as calcium carbonate (limited group of materials is recited so the claim is considered to be anticipated). The applicant argues that dairy products do not contain essential oils so the packaging is different. The examiner is not convinced by this argument. The applicant has no claims directed to the combination of specific food products with the laminate; as far as the examiner is concerned, the applicant has a laminate. Any structure, having the physical components recited, meets the claim. While filler may be added for a different purpose, it is still

Art Unit: 1773

added and would have the claimed effect. There is no reason why the materials taught by Castle et al. could not be used to package food containing essential oils.

***Conclusion***

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571)-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 1773

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano  
Primary Examiner  
Art Unit 1773

A handwritten signature in black ink, appearing to be 'DLT', enclosed within a simple, slightly irregular oval border.